IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 947 of 1998

in

SPECIAL CIVIL APPLICATIONNo 6974 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

ALLARAKHA IBRAHIM PATHAN

Appearance:

1. LETTERS PATENT APPEAL No. 947 of 1998

MR YOGESH S LAKHANI for Appellant No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 15/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Admit. Learned advocate Shri Upadhyay waives service of notice for the respondent. At the request of the learned advocates, the appeal is finally heard today.

2. The appellant is the State Road Transport Corporation and the respondent was working as Driver under the appellant. As the respondent driver was found medically unfit, his service had been terminated by the appellant by an order dated 24.11.1995. Being aggrieved by the order of termination, the respondent filed Special Civil Application No. 6974 of 1997 challenging the order.

3. After hearing the concerned advocates, the learned single Judge directed the petitioner to reinstate the respondent in the cadre of Peon as it was possible for the respondent to perform duties of a peon as per his physical fitness. The learned single Judge also directed the appellant to give appointment to the son of the respondent on compassionate ground in due course. Being aggrieved by the order dated 28.4.1998 passed by the learned single Judge, the appellant Corporation has approached this Court by way of this appeal.

4. It is pertinent to note that certain developments have taken place during the pendency of the appeal and as the appeal can be finally disposed of in view of developments, we need not go into the merits of the appeal.

5. It has been submitted by learned advocate Shri Lakhani appearing for the appellant that during the pendency of the appeal, the respondent has already been appointed as a peon. Learned advocate Shri Upadhyay has submitted that as the respondent has been given appointment as a peon, he is not pressing for appointment of his son on compassionate ground and, therefore, his son need not be appointed in any cadre on compassionate ground.

6. In view of the fact that the respondent does not want his son to be appointed on compassionate ground, as he has already been appointed as a peon, the appeal is allowed and the direction with regard to giving appointment to the son of the respondent on compassionate

ground is set aside. It is however directed that the respondent shall be continued in the cadre of peon as if he is a regularly appointed peon. Needless to say that the respondent shall not be eligible for any back wages and the order of the learned single Judge so far as the direction given for appointment to the respondent in the cadre of peon shall remain as it is. Except the direction which pertains to giving appointment to the son of the respondent on compassionate ground, all other directions given by the learned single Judge shall remain as they are.

7. The appeal stands disposed of as allowed with no order as to costs.

(A.R. Dave, J.)

(D.P. Buch, J.)
(hn)